

HOUSE BILL REPORT

HB 2115

As Reported by House Committee On:
Public Safety & Emergency Preparedness

Title: An act relating to allowing booking photographs and electronic images at jails to be open to the public.

Brief Description: Allowing booking photographs and electronic images at jails to be open to the public.

Sponsors: Representative O'Brien.

Brief History:

Committee Activity:

Public Safety & Emergency Preparedness: 2/17/09, 2/18/09 [DPS].

Brief Summary of Substitute Bill

- Requires each county and city jail to include booking photographs as part of its jail register.

HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Hurst, Chair; O'Brien, Vice Chair; Pearson, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Goodman, Kirby and Ross.

Minority Report: Do not pass. Signed by 1 member: Representative Appleton.

Staff: Yvonne Walker (786-7841)

Background:

Each city and county jail located in Washington is required to maintain a jail register which is open to the public. The law enforcement officer who is charged with being responsible for the operation of the jail must enter, on a timely basis, the name of each person held in

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confinement, the reason for confinement, when the person was confined, and the time and the manner in which the person was discharged.

Generally, all other records regarding a person confined in jail are confidential and may only be released to a criminal justice agency or upon the written consent of the person being confined. Law enforcement may use the booking photographs of a person arrested and confined in a jail or prison to assist in conducting criminal investigations. Certain information and photographs of persons convicted of a sex offense may be released to the public for community protection purposes.

Summary of Substitute Bill:

Each county and city jail must include booking photographs or electronic images of each person confined in jail as part of its jail register.

Various technical changes are made, including the deletion of a provision of the act that was repealed by the Legislature in 1987, and adding the authorization to release records relating to kidnapers which is consistent with current statute under RCW 4.24.550.

Substitute Bill Compared to Original Bill:

The statutory provision (RCW 70.48.070) is eliminated since it was repealed by the Legislature in 1987 (chapter 462, section 23 of the laws of 1987). This statute used to refer to an agency call the Corrections Standards Board (Board). That Board was eliminated on January 1, 1988, and its functions were transferred to the Juvenile Rehabilitation Administration and the Department of Corrections.

The release of records relating to kidnapers is added to the bill which authorizes such records to be disseminated for community protection purposes. Under RCW 4.24.550, public agencies are already (under current law) authorized to release information regarding both sex offenders and kidnapping offenders. However, under the County and City Jails Act, sex offender information is authorized for release but kidnapping offenses are left out of the statute.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) In 1997 a City of Spokane (city) deputy attorney was arrested for assault and drunk driving. As part of the arrest, the police report was removed from the police log. A request was made for the police report but the city refused to turn over the records. The case subsequently went to the Division III Court and then to the Washington Supreme Court. However, at the same time the case was being challenged, the city released the booking reports of several Hispanic and black gentlemen that had been arrested for violent felony offenses. To date there has never been an exemption for the handling of photographs put in state statute and the handling of photographs was never enumerated in state statute. The Washington Supreme Court has held that incident reports are discloseable and open to the public. Washington is the only state that does not release photographs.

In 1997 there were 24 men in Washington with the name of Richard Yates, the same name of the man who went onto become a serial murderer. The procedure to include photos as part of a jail's register would not only help to correctly identify a person but also exonerate others. Mug shots can often clear the police of allegations of false claims of unnecessary force as well as document the condition of someone at the time of arrest. Mug shots are important pieces of information that the public can use to avoid misunderstandings and invasions of privacy.

Most people would be surprised that booking photographs are not public records because mug shots are on the Internet and on the TV all the time. The problem is that the media is provided those photos at the discretion of the authorities. Currently, the name of each person booked in jail is public information and both the photo and name of each inmate incarcerated in prison is public information. This bill would standardize how booking information is handled throughout the state and it would also help avoid mistaken identities.

(Opposed) There are constitutional concerns with this bill. The original purpose of the statute was to ensure that people were not held in secret, and to allow oversight of jail operations and protect the privacy of the inmate. It seems the main purpose of the current version of the bill is to shame the arrestee. These are individuals that have been arrested and not necessarily those that have been convicted or even been charged with a crime yet. The bill should not be analyzed from the standpoint of punishment but rather in the arrest context where people have a higher expectation of privacy.

There is federal case law that states that shame and punishment make an arrest an unreasonable seizure. There is also a 9th Circuit Court case that states that jail webcams are unconstitutional. You cannot punish someone before there is an adjudication of guilt in accordance with due process. Constitutional rights do not disappear upon arrest.

Persons Testifying: (In support) Representative O'Brien, prime sponsor; Rowland Thompson, Allied Daily Newspaper; and Suki Dardarian, Seattle Times.

(Opposed) Shankar Narayan, American Civil Liberties Union of Washington.

Persons Signed In To Testify But Not Testifying: None.